

Restaurant Lease of Mixed-Cocktails for Off-Premises Consumption

1. Parties

This Agreement is made on this _____ day of _____, 20 _____ by the ("Lessee") _____ (**Legal Entity**), holder of Restaurant spirituous liquor license No. _____. Under A.R.S. § 4-203.06(B)(2), the Department of Liquor has randomly selected ("Lessor") _____ (**Legal Entity**), holder of a Bar or Liquor Store spirituous liquor license No. _____, to be a party to this Agreement. Lessee and Lessor (collectively "the parties") agree that the Department of Liquor Licenses and Control ("Department") and the State of Arizona, except as their interests as third party beneficiaries of this Agreement may appear herein, are not parties to this Agreement.

Note: The Department will complete Lessor's Information after conducting the random selection.

2. Recitals

Whereas A.R.S. § 4-203.06 permits Restaurant liquor licensees to lease from Bar and Liquor Store licensees the privilege of selling mixed cocktails for consumption off the licensed premises in accordance with A.R.S. § 4-244(32)(d), and

Whereas, Lessee has applied to lease the privilege of selling mixed cocktails for consumption off the licensed premises, the Department has approved the application, and the Department has randomly selected Lessor for this Lease Agreement,

Now, therefore, it is hereby agreed as follows:

3. Pro-rated Initial Term.

Beginning on _____ and continuing until _____ restaurant renewal date, Lessee shall have the privilege of selling mixed cocktails for consumption off the licensed premises in accordance with A.R.S. § 4-203.06 and -244(32)(d).

4. Renewal

Except as provided in Sections 6 through 9 of this Agreement, Lessee may renew this Agreement for successive one-year terms commencing on _____ (restaurant renewal date) each year until December 31, 2025, at which time this Agreement and all rights, duties and privileges created herein shall terminate.

Lessee must affirmatively renew this Agreement by submitting the applicable renewal forms to the Department at the time of its annual Restaurant liquor license renewal form. The Department shall review the renewal and may, as provided in Sections 6 through 9 of this Agreement, refuse to permit Lessee to renew this Agreement.

If Lessee fails to renew this Agreement on or before _____ (restaurant renewal date), this Agreement shall expire and Lessee may apply under A.R.S. § 4-203.6(B)(1) and, if the Department grants the application, enter a new lease with a randomly-selected Bar or Liquor Store licensee under A.R.S. § 4-203.06(B)(2).

After the Pro-rated Initial Term of this Agreement, each renewal shall be for a one-year term, commencing on _____ (restaurant renewal date).

5. Consideration.

As a condition of the effectiveness of this Agreement, and Lessee using the privilege to sell mixed cocktails for off- premises consumption, Lessee shall pay to Lessor, through the Department, the annual lease payment of **\$1,000**. For the first term of the lease, Lessee shall pay an amount equal to **\$83.33** times the total number of months included in the first term.

- a. Lessee must pay the above amount(s) to the Department in full in one lump-sum payment.
- b. Upon the Department's receipt and validation of Lessee's payment of the above amount, the Department shall act as a third-party facilitator to arrange for the transmission of the payment to the Lessor.
- c. Upon the Department's receipt of Lessee's payment, this Agreement or any renewal thereof shall be in effect and Lessee's privileges shall commence or continue for the applicable lease term. Failure to pay the lease amount before the commencement of any term shall not operate to modify the length of the term.
- d. The above lease amount(s), upon transmission to Lessor, are nonrefundable to Lessee.
- e. If after the commencement of this Agreement Lessee's payment method is returned or rejected, the Department shall suspend this Agreement until Lessee submits an alternative form of payment and any applicable penalties and the Department validates that payment.
- f. A suspension, revocation, or transfer of the privileges in this Agreement shall not entitle the Parties to any refund or offsets of the amounts already paid under this Agreement.
- g. The Department is not responsible to the Parties or to any other person including the Parties' heirs, successors, or assigns, to collect, retain, recover, sequester, transmit, transfer, or account for the above amounts or any other financial obligations related to this Agreement other than as expressly provided in this Agreement.

6. Effect of a Transfer of Lessee's License During this Agreement.

If, while this Agreement is in effect, Lessee transfers Control of its license under A.R.S. § 4-101(10), Lessee may also transfer its privileges under this Agreement under the following terms and conditions:

- a. Lessee is not obligated to transfer the privileges granted in this Agreement upon the sale of its business, and a purchaser of Lessee's business is not obligated to assume Lessee's obligations and privileges under this Agreement.
- b. For any transfer of the privileges granted in this Agreement, Lessee must comply with the notice requirements under A.R.S. § 4-203(F).
- c. The transferee shall assume the place of Lessee under this Agreement during any pending term of this Agreement, and may renew this Agreement at the commencement of the following annual term.

- d. Lessor shall not be entitled to any additional payments during a pending pro-rated or annual term of this Agreement due to the transfer of a Lessee's privileges.

7. Effect of a Transfer of Lessor's License During this Agreement.

If, while this Agreement is in effect, Lessor transfers Control of its license under A.R.S. §§ 4-101(10) and -203, Lessee shall continue to enjoy the privileges under this Agreement, under the following terms and conditions:

- a. The transferee of Lessor's license is not entitled to any additional payments during a pending term of this Agreement.
- b. If Lessor's license is transferred to a new person, other than through an acquisition of control of Lessor's business, the transferee shall assume Lessor's place during a pending term, but shall not be entitled to renew the lease for successive terms and Lessee shall be paired with a new Lessor from the pool of licensees for random selection under A.R.S. § 4-203.06(B)(2).

8. Cancellation, Suspension, Revocation, and Nonrenewal of this Agreement.

This Agreement is subject to cancellation, suspension, revocation, and nonrenewal under the following circumstances:

- a. Lessee has no obligation under this Agreement to renew this Agreement.
- b. The Department may refuse to approve Lessee to renew this Agreement based on the proposed location or the history of the Lessee, including its Controlling Persons under A.R.S. § 4-101(11), during the term of this Agreement.
- c. In addition to its disciplinary authority in A.R.S. § 4-210(A), the Department may summarily suspend, without advance notice or the opportunity for a hearing, the Lessee's privileges under this Agreement for any violation of Title IV or Department rules.
- d. If Lessee does not renew this Agreement or if the Department refuses to approve Lessee to renew this Agreement, the Department shall return Lessor to the pool of licensees for random selection under A.R.S. § 4-203.06(B)(2) no earlier than the natural conclusion of the pending lease term.
- e. Lessee shall not be entitled to any partial or total refund of payments under this Agreement due to any Department imposed suspension, revocation, or other disciplinary action.

9. Revocation, Suspension, Nonrenewal, Expiration, or Inactivity of the Parties' Licenses.

- a. Lessee's privileges under this Agreement shall continue to the conclusion of a pending term if Lessor's license is suspended, revoked, not renewed, expired, or placed on inactive status.
- b. If Lessor's license is suspended, revoked, not renewed, expired, or placed on inactive status at the time of renewal of this Agreement, at the conclusion of the pending lease term the Department shall pair Lessee with a new randomly selected Bar or Liquor Store licensee under A.R.S. § 4-203.06(B)(2), and Lessee shall execute a new lease agreement with that replacement Bar or Liquor Store licensee.

- c. If the Department suspends or revokes Lessee's license, the Department shall return Lessor to the pool of licensees for random selection under A.R.S. § 4-203.06(B)(2) no earlier than the natural conclusion of the pending lease term.

10. Lessee's Duties Under A.R.S. § 4-203.06.

- a. At all times during this Agreement, Lessee shall comply with Title IV and Department rules, A.R.S. § 4- 203.06, and this Agreement.
- b. Lessee must continue to comply with A.R.S. § 4-205.02(J) and derive at least forty (40) percent of its gross revenue from the sale of food.
- c. Lessee's sale of spirituous liquor for consumption off the premises may not exceed thirty (30) percent of the sales price of on-sale spirituous liquors by Lessee from its premises, as prescribed in A.R.S. § 4- 206.01 (G).
- d. Lessee is solely responsible for any violation of Title IV and Department rules related to its business including the sale of mixed cocktails for consumption off the premises.
- e. This Agreement does not permit Lessor to direct, manage, or control any part of Lessee's business and Lessee shall not transfer control of its business except as provided for in A.R.S. § 4-203.
- f. Lessee may not pay to Lessor any direct or indirect compensation for the privileges granted in this Agreement except the pro-rated or annual lease amounts in this Agreement.

11. Lessor's Duties Under A.R.S. § 4-203.06.

- a. At all times during this Agreement, Lessor shall comply with Title IV and Department rules, A.R.S. § 4- 203.06, and this Agreement.
- b. Lessor may continue to exercise all rights and privileges granted to it under its license, including where applicable, the privilege to sell mixed cocktails for consumption off the premises. This Agreement does not limit or modify Lessor's license in any way.
- c. Lessor may not direct, manage, or control any part of Lessee's business and is not responsible for Lessee's violation of Title IV and Department rules related to the operation of Lessee's business, including the sale of mixed cocktails for consumption off the premises.
- d. Lessor may not receive any additional compensation for its association with Lessee under this Agreement.

12. No Parol Evidence.

This Agreement is intended by the Parties as a final and complete expression of their agreement. No course of prior dealings between the Parties shall supplement or explain any terms used in this document and no other understanding either oral or in writing shall be binding.

13. Severability.

The provisions of this Agreement are severable. Any term or condition deemed illegal or invalid shall not affect any other term or condition of this Agreement.

14. Change in Law.

The Parties understand and acknowledge that this Agreement is made pursuant to A.R.S. § 4-203.06 and other Arizona laws in effect at the time of this Agreement. Neither party has a vested right to conclude a lease term or to commence an annual lease term, or to any of the specific terms in this Agreement, if a subsequent amendment to Arizona law requires the amendment or cancellation of this Agreement, or if the Department subsequently amends the language of this standard form agreement under A.R.S. § 4-203.06(B)(3)(A).

15. Counterparts.

This Agreement may be executed in counterparts, each of which will, when executed, be deemed an original and all of which will be deemed to be one and the same instrument. The Parties agree that an electronic transmission of the signed Agreement will have the same force and effect as a signed original.

16. Indemnification of the State and its Agencies.

To the fullest extent permitted by law, the Lessee shall defend, indemnify, and hold harmless the State of Arizona and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees (hereinafter referred to as "Indemnatee") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including court costs, attorneys' fees, and costs of claim processing, investigation and litigation) (hereinafter referred to as "Claims") for bodily injury (including death) or personal injury or loss or damage to tangible or intangible property caused or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Lessee or any of its owners, officers, directors, agents, employees or subcontractors. This indemnity includes any claim or amount arising out of, or recovered under, the Workers' Compensation Law or arising out of the failure of Lessee to conform to any federal, state, or local law, statute, ordinance, rule, regulation, or court decree. It is the specific intention of the Parties that Indemnatee shall in all instances be indemnified by Lessee from and against any and all Claims. It is agreed that Lessee will be responsible for primary loss investigation, defense, and judgment costs where this indemnification is applicable. Lessee hereby waives all rights of subrogation against the State of Arizona, its officers, officials, agents, and employees with respect to the Claims.

Print Name Owner/Controlling Person (Lessee)

Signature Owner/Controlling Person (Lessee)

Date

Under A.R.S. § 4-203.06(A), Bar and Liquor Stores "shall lease to Restaurant licensees the privilege of selling mixed cocktails for consumption off the licensed premises." Under A.R.S. § 4-203.06(B)(2), Lessor's assent to this Agreement occurs by operation of law.